

To: Mayor & City Council Through: City Manager

Agenda Item Number_67 Meeting Date: 12/14/00

SUBJECT: LICENSE WITH METRICOM, INC. FOR RENTAL OF STREET LIGHT

POLES

PREPARED BY: Marlene A. Pontrelli, Deputy City Attorney (350-8120)

REVIEWED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: This is the second public hearing to authorize the Mayor to enter into a license

with Metricom, Inc.

COMMENTS: METRICOM, INC. (0802-21) ORDINANCE NO. 2000.51 Set public

hearings to grant Metricom, Inc. a license to attach, maintain, operate, install, remove and upgrade on municipal light poles a digital wireless communications

micro cellular radio.

Document Name: (20001214cacc02) Supporting Documents: Yes

SUMMARY: Metricom, Inc. has applied to the City for a license to attach, maintain, operate,

install, remove and upgrade on municipal light poles within the City a digital wireless communications micro cellular radio. Metricom operates the Ricochet access service, which uses wireless radios mounted on utility poles for mobile access to the internet. The license agreement grants such right to Metricom, Inc.

for a period of five years.

RECOMMENDATION: The Telecommunications Task Force has reviewed the Metricom technology

and feasibility and recommends adoption of the ordinance.

FISCAL NOTE: Metricom, Inc. will pay the City an annual fee of sixty dollars (\$60.00) per

utility pole utilized, plus a rental fee of five percent (5%) of adjusted gross income received from all City based customers. In addition, the City will be

receiving at least ten (10) subscriptions for City use.

ORDINANCE NO. 2000.51

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING A WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK LICENSE TO METRICOM, INC.

RECITALS:

- 1. WHEREAS, Metricom, Inc., a Delaware corporation ("Licensee") has applied to the City for the installation, placement, operation and maintenance of a wireless digital communications radio network in, on, upon, along, and across public rights-of-way and public utility easements within the City; and
- 2. WHEREAS, by such authority as may be conferred by the Tempe City Charter, Tempe City Code, and state law, the City is desirous of entering into a license agreement with Licensee.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That a License in the form attached hereto as Exhibit A is approved.

Section 2. That the Mayor of the City of Tempe is hereby authorized to execute the License document and all other necessary documents to effectuate the license granted herein.

PASSED AND ADOPTED TEMPE, ARIZONA, this day			OF	THE	CITY	OF
	M	AYOR				
ATTEST:						
City Clerk						
APPROVED AS TO FORM:						
City Attorney						

LICENSE AGREEMENT BETWEEN THE CITY OF TEMPE AND METRICOM, INC. FOR THE USE OF PUBLIC RIGHTS-OF WAY AND RENTAL FOR CITY STREET LIGHT POLES

This License, is issued by the City of Tempe (hereinafter called "Licensor" or "City"), a municipal corporation, to Metricom, Inc., a Delaware Corporation doing business in the State of Arizona (hereinafter called "Licensee").

WHEREAS, Licensee has applied to the City for a License for the installation, placement, operation and maintenance of a wireless digital communications radio network in, on upon, along, and across public rights-of-way and public utility easements within the City; and

WHEREAS, Licensee desires to attach antennas and other wireless communications facilities used in the operation of its radio network to City street light poles; and

WHEREAS, Licensee has agreed to comply with public right-of-way use requirements that the City may establish from time to time; and

WHEREAS, Licensee has agreed to provide and maintain accurate maps showing the location of all its facilities in the City and facilities it will use in the rights-of-way and public utility easements within the City, and to comply with such other mapping requirements as the City may establish from time to time; and

WHEREAS, by such authority as may be conferred by state and federal law, the Tempe City Charter, and Tempe City Code; and

WHEREAS, pursuant to ordinance adopted by the City, the City Council has authorized the Mayor to execute a license with Licensee to construct, install, operate, and maintain a wireless digital communications network in, along, under, over and across certain public rights-of-way and public utility easements within the City and City street light poles; and

NOW, THEREFORE, the Licensor hereby grants to the Licensee the License as follows:

SECTION 1. License Granted.

1.1. <u>Scope</u>. There is granted to the Licensee, a nonexclusive license to attach, maintain, operate, install, remove, and upgrade, on municipal light poles a digital wireless communications micro cellular radio ("Radio Network"), subject to the applicable provisions of this license, the City Charter, City Code and any future amendments, together with all applicable laws and reasonable regulations of any regulatory agency having competent jurisdiction.

The City authorizes Licensee to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace Ricochet MCDN ("Radios") on designated municipal facilities, within the public rights-of-way for the purposes of providing services to persons located within or without the City limits. Should Licensee desire to locate a hub station or attach a hub station to an existing monopole on City owned property or public right of way, a separate agreement shall be required to cover such rental fees.

- 1.2. <u>Master Plan</u>. No Radios shall be attached to any city-owned property until Licensee has submitted a wireless communication's master plan for City review and approval setting forth the location of such Radios in the City. Additionally, Licensee shall comply with all provisions of the Tempe City Code and zoning ordinance pertaining to the location of wireless communications facilities.
- 1.3. <u>Power Source</u>. Subject to the provisions of Section 4.4, Licensee shall have the right to draw electricity for the operation of the Radios from the power source associated with each such attachments to City owned street light poles, or lighting fixtures ("Municipal Facilities"), provided however that such electrical connections shall not interfere with the operation of the Municipal Facilities.
- 1.4. Operation on Non-City Owned Utilities. Subject to obtaining permission of the owner(s) of the affected property, the City hereby authorizes and permits Licensee to enter upon the public right of way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Radios in or on poles or other structures owned by public utility companies or other property owners located within the public right of way as may be permitted by the public utility company or property owner, as the case may be. By executing this License, the City does not waive any rights that it may have against any public utility or property owners to require (a) that they obtain prior approval from the City of the permission granted to licensee to attach, install, operate and maintain its Radios on poles owned by others within the public rights of way, or (b) that the revenues received.

SECTION 2. Conditions.

2.1. <u>Radio Locations</u>. Licensee or its designee shall submit the plans and specifications for City review and approval and pay all applicable review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this License. The proposed locations of Licensee's planned initial installation of Radios and related equipment shall be as indicated on the attached Exhibit A, which is hereby incorporated by reference. In the event that the Licensee plans to expand its installation beyond the locations identified on Exhibit A, Licensee shall seek approval of plans indicating the additional Municipal Facilities that will be used. Approval of the Radios on additional Municipal Facilities shall be subject to approval by the Public Works Manager or his designee, provided that approval shall not be unreasonably withheld or delayed. Licensee shall keep accurate installation records of the location of all facilities in the public right of way and furnish them to the City upon request.

- 2.2. <u>Damage to City Property</u>. If Licensee damages or disturbs the surface or subsurface of any public right-of-way, easement or adjoining public property or any Municipal Facility, or public improvement, Licensee shall promptly, at its own expense, and in a manner acceptable to the City, repair the damage or disturbance. If the Licensee, through its own negligence, damages any underground City facility, Licensee shall pay, in addition to any other payments, a penalty or surcharge in accordance with Tempe City Code Section 29-19, but in no event greater than fifty thousand dollars (\$50,000) per incident.
- 2.3. <u>Public Emergency</u>. In the event of a public emergency, City shall have the right, upon reasonable notice to Licensee, to sever, disrupt, or unattach any Radios of the Licensee. City shall, where reasonable, work with Licensee in responding to the emergency. A public emergency shall be any condition that poses an immediate threat to the safety or welfare of the citizens of City.
- Relocation. Licensee shall bear the entire cost of timely relocating its Radio 2.4. Network facilities located within public rights-of-way and easements, the relocation of which are necessitated by the construction of public improvements by or on behalf of the City. If Licensee is required to relocate its Radio Network facilities due to the construction of a public improvement, the City shall provide Licensee with written notice, at least one hundred twenty (120) days before any required action of Licensee to relocate affected portions of the Radio Network and shall cooperate with Licensee to identify a replacement and alternative public right-of-way for the relocation of affected portions of the Radio Network. Within one hundred twenty (120) days after service of notice by the City, Licensee shall remove the designated portions of the Radio Network, and, if requested, restore the Municipal Facilities to a condition comparable to the condition before the installation of the Radio Network. The City will make every reasonable effort to design and construct projects pursuant to this section so as to avoid relocation expenses to Licensee. The City will not exercise its right to require the Licensee's Radio Network to be relocated in an unreasonable or arbitrary manner.
- 2.5. <u>No Transfers</u>. The License granted is for the Licensee only and any transfer of control of the Telecommunications Network to any third party who is not also licensed or otherwise authorized by the City is prohibited without obtaining an amendment to this License except for transfers permitted by Section 7.
- 2.6. <u>Bond</u>. Licensee shall post a cash deposit in a form acceptable to the City Manager in the sum of Fifty Thousand Dollars (\$50,000.00) as security for the faithful performance by it of all the provisions of this License. This cash deposit shall remain in effect during the period of installation of the Radios as indicated on Exhibit A. Licensee may cancel the cash deposit upon completion of installation of the Radios if no outstanding claims against Licensee resulting from the installation exist. City may draw upon the cash deposit if, after giving Licensee thirty (30) days notice and an opportunity to cure, Licensee fails to cure any default under this License. Within thirty (30) days after notice to Licensee that any amount has been withdrawn from the cash deposit, Licensee shall restore the cash

deposit to its initial amount. City may request a separate cash deposit in a sum up to Fifty Thousand Dollars (\$50,000.00) during construction by Licensee in the event Licensee submits a proposal for expansion to Municipal Facilities not identified on Exhibit A.

- 2.7. <u>Indemnification</u>. Licensee shall indemnify, protect, defend and hold harmless the City, its council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all related costs and expenses incurred, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this License by the Licensee.
- 2.8. Privilege Limitations. Any privilege claimed under this License by the Licensee in any public street or other public property shall be subordinate to any prior or subsequent occupancy or use by the City or any other governmental entity, and shall be subordinate to any prior lawful occupancy or use by any other person, and shall be subordinate to any prior easements; provided, however, that nothing in this License shall extinguish or otherwise interfere with property rights established independently of this License.
- 2.9. <u>Local Agent</u>. Licensee shall maintain a local agent within Maricopa County, who is familiar with the Licensee's facilities and who is responsible for satisfying the information needs of the City and other right-of-way users.
- 2.10 <u>Most Favored Nation</u>. If, after this License is granted to the Licensee, the Licensee enters into a license agreement with another municipality within Maricopa County, Arizona that grants to the other municipality, rights or financial benefits which are greater than what is provided by this License, the City shall have the right to amend this License to include substantially similar benefits and such other terms.
- 2.11 <u>Application Laws</u>. All Radio Network equipment shall be installed, operated and maintained in accordance with the City of Tempe Code, including the City of Tempe Zoning Ordinance, with respect to the provisions regulating wireless communications facilities as the same now exist or may be amended or may be adopted. The public rights of way shall be used according to plans approved by the City. Licensee shall obtain any required approval of the radios subject to this License, or any modifications or changes thereto, from the Arizona Corporations Commission, appropriate agencies or other governmental bodies, and secure any required assessment of the impact the radios may have upon the environment.

If it is necessary for the Licensee to comply with any law or regulation of the Federal Communications Commission or the Arizona Corporations Commission to engage in business activities associated with use of the public highways and public rights-of way to provide the services herein, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License. Provided, however, no such law or regulation of the Federal Communications

Commission or the Arizona Corporations Commission shall enlarge or modify any of the rights or duties granted by this License without a written modification to this License.

2.12. Non interference.

- 2.12.1 Licensee shall ensure that the Radio Network equipment will not cause radio frequency interference with the reception or broadcasting of existing wireless communication facilities devices, cable television, community antennae televisions systems, satellite broadcast television systems, or to the City traffic or other communications signal equipment. The term "radio frequency interference" is defined as any degradation in the ability to receive an intended signal.
- 2.12.2 Except as permittee by applicable laws or this License, Licensee shall not interfere in any manner with the exiting uses of the rights-of-way, including the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner or owners of the affected property or properties.
- 2.12.3. The term "interference" under this section is defined as physical interference and radio frequency interference. Physical interference is where Licensee devices cause reduced use of others' prior mounted equipment, or where Licensee devices cause an obstruction in a pre-existing and necessary line-of-sign path.

SECTION 3. Plan Approval, Permits and Inspection.

3.1. Plan Approval and Permits. Before the start of construction or repair work within public rights-of-way, easements or City-controlled property, plans showing the proposed location of facilities to be constructed in relation to the location of other known adjacent conduit and facilities, shall be submitted to the City Engineering Department for its review and approval. These plans shall be prepared and submitted in accordance with the Tempe Procedure Manual for securing a permit for utility construction in the public right-of-way and easements. At the time of construction, the applicant shall obtain a right-of-way permit and provide proof of insurance as reasonably required by the City. The fee for the right-of-way permit, shall be in addition to the costs of any other permit, license, or other documents required by existing applicable federal, state or local laws. During construction, the City will inspect all construction, including any trenching, backfilling, and other related items and Licensee shall reimburse the City its actual, reasonable and documented inspection costs. Any contractors working in the right-of-way under the permit of the

Licensee shall hold all applicable licenses including, but not limited to, a Class A contractor's license.

- 3.2. <u>Inspection Costs</u>. Licensee shall pay the City Engineering Department the amount billed monthly for the actual cost of the City's inspection and review services incurred during the previous month due to construction activities of the Licensee in the public right-of-way. The amount shall be due within thirty days of receipt of the monthly billing. Licensee shall have the right during regular office hours to examine and to make copies of the City accounting records on time and cost incurred for inspection services provided to Licensee for work in the public right-of-way.
- 3.3. <u>Electronic Mapping</u>. Licensee shall be responsible for maintaining accurate and current records of the location of all facilities and furnish this information upon request to the City in an electronic mapping format compatible with the current City electronic mapping format. Licensee shall pay the actual costs the City incurs each month in updating the City's electronic mapping format due to location or relocation of Licensee's facilities in the public right-of-way.

SECTION 4. Annual Fee, Rental Fee and Other Charges.

- 4.1. <u>Application Fee</u>. Licensee shall be solely responsible or the payment of all lawful fees and charges in connection with Licensee's performance under this License, including those set forth below. The Licensee agrees to pay the city an application fee in the amount of one thousand dollars (\$1,000) prior to approval of this License by the City Council for administrative costs.
- Annual Fee. Licensee shall pay to the City an annual fee (the "Annual Fee") 4.2. in the amount of sixty dollars (\$60.00) for the use of each Municipal Facility upon which a Radio has been installed pursuant to this License. The initial Annual Fee shall be due and payable prior to the installation of any Radio on any Municipal Facility. The Annual Fee with respect to each year thereafter shall be an amount equal to the number of Radios installed on Municipal Facilities as of December 31, multiplied by the Annual Fee. In the event a Radio is added or removed during the year, the Annual Fee shall be prorated on a monthly basis, with more than fifteen days (15) equaling a month. The Annual Fee on each December 31 shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index which occurred during the previous five-year period for the West Urban Region Consolidated The Annual Fee shall be due and payable not later than Metropolitan Statistical Area. thirty (30) days after each December 31. However, the first payment pursuant to this License shall be payable in advance of any installation and shall cover the period through December 31, 2001.
- 4.3. <u>Rental Fee</u>. The Rental Fee for use of the city's facilities in addition to the Annual Fee is five percent (5%) of Licensee's adjusted gross revenues collected during each preceding calendar quarter by Licensee from its subscribers within the City. Adjusted gross revenue shall be the dollar amount received by Licensee for its services provided to

subscribers with billing addresses in the City, excluding (a) the Annual Fee and any right of way rental fees paid to the City; (b) any utility users' tax, telecommunications tax, or similar tax or fee; (c) local, state, or federal taxes that have been billed to the subscribers and separately stated on subscribers' bills; and (d) revenue uncollectible from subscribers (i.e. bad debts) with billing addresses in the City that were previously included in adjusted gross revenue ("Adjusted Gross Revenue"). The Adjusted Gross Revenue rental fees shall be due on a quarterly basis commencing with the first full calendar quarter after the date that Licensee first provides service to commercially paying subscribers within the City using radios installed pursuant to this License and shall be paid on or before the 30th day after the end of each quarter. Within forty-five (45) days after the termination of this License, such fees shall be paid for the period that has elapsed since the end of the last calendar quarter for which the rental fees have been paid. Licensee shall furnish City with each payment of rental fees, a statement executed by an authorized officer of Licensee or his or her designee certifying the amount of Adjusted Gross Revenues and all payments, deductions and computations for the period covered by the statement, all in accordance with Generally Accepted Accounting Principles. Any overpayment to City shall be offset against the next payment due from Licensee. Acceptance of any payment due by the City shall not be deemed a waiver by the City of any breach of this License.

- 4.3.1. <u>Inspection of Records</u>. The City may inspect Licensee's accounting records at any time during regular business hours upon ten (10) days prior written notice and may audit the books from time to time, but in each case only to the extent necessary to confirm the accuracy of payments due under Section 4.2. The City shall bear the cost of any such audit, unless such audit reveals an underpayment to the City of more than five percent (5%) of the rental fee that was due to the City for such calendar year in which case Licensee shall pay for the audit in an amount not to exceed \$5,000. Once each year, the City may require an annual report from Licensee relating to its operation and revenues within the City. City agrees that any trade or proprietary information shall be kept confidential to the extent permitted by the Arizona Public Records Law, and except as may be required to be disclosed in the event of litigation between the parties.
- 4.4. <u>Electricity Charges</u>. Licensee shall be solely responsible for payment of all electric utility charges to the applicable utility company based upon the Radios' usage of electricity and applicable tariffs.
- 4.5. <u>Taxes</u>. Licensee shall pay the applicable City, county, and state transaction privilege and use tax.
- 4.6. <u>Municipal Access Program</u>. In consideration of the City's execution and delivery of this License. City shall have the right throughout the term of this License to have when such service is commercially available in the City, up to a maximum of ten (10) subscriptions of Ricochet basic service subscriptions. City understands and agrees that Licensee's modems and equipment required to utilize the subscriptions and any additional service subscriptions or service options the City may desire are expressly excluded from this special Municipal Access Program and may be obtained from either Licensee or an authorized retailer at market rates current from time to time. City shall use all subscriptions

provided pursuant to this §4.6 solely for its own use and shall not be entitled to resell, distribute, or otherwise permit the use of the same by another person or entity. City's use of the subscriptions shall be subject to Licensee's standard Ricochet terms and conditions.

SECTION 5. Insurance Requirements.

- 5.0. Minimum Limits of Insurance. Licensee shall at all times during the term hereof, at its own cost and expense, carry and maintain, for the mutual benefit of the City and Licensee, general public liability insurance against claims for bodily injury, death or property damage occurring on or about Licensee's radio network facilities, cables and appurtenances, which insurance shall cover claims as may be occasioned by the act, omission or negligence of Licensee or its officers, agents, representatives, employees or servants during all times that this License is in effect. Insurance limits are inclusive of umbrella coverage. Licensee shall maintain limits no less than stated for each type of insurance.
- 5.01. <u>Commercial General Liability</u>: \$5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.
- 5. 02. <u>Automobile Liability</u>: \$5,000,000 combined single limit per accident for bodily injury and property damage, including coverages for owned, hired, and non-owned vehicles as applicable.
- 5.03. <u>Workers' Compensation and Employers Liability</u>: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.
- 5.1. <u>Deductibles and Self-Insured Retentions</u>. Any deductibles or self-insured retentions must be declared and approved by the City. At the option of the City, either the insurer shall reduce or eliminate deductibles or self-insured retentions as respects the City, its officials, employees, and volunteers, or the Licensee shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- 5.2. <u>Insurance Provisions</u>. The policies are to contain, or be endorsed to contain, the following provisions:

5.2.1. Commercial General Liability and Automobile Liability Coverages

a. The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Licensee including the insured's general supervision of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee, or automobiles owned, leased, hired or borrowed by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or

volunteers.

- b. The Licensee insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be in excess of the Licensee's insurance and shall not contribute to it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.
- d. Coverage shall state that the Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5.2.2. <u>Workers' Compensation and Employers Liability Coverage</u>. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Licensee for the City.
- 5.2.3. <u>All Coverages</u>. Each insurance policy required by this License shall be endorsed to state that the coverage shall not be suspended, voided, and/or cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City's Risk Manager. (See address for Risk Manager under "Questions" in this Section.)
 - 5.3. Insurance Related Requirements: Licensee shall:
 - 5.3.1. Before the commencement of any work or services under the License, Licensee shall furnish the City with certificates of insurance. The certificates shall be in form and with insurers acceptable to the City's Risk Manager (or designee). The insurance certificates shall clearly evidence all insurance required in this License and provide that the insurance shall not be cancelled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to the City.
 - 5.3.2. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.
 - 5.3.3. Replace certificates, policies, and endorsements for any insurance expiring before the completion of services.
 - 5.3.4. Maintain insurance from effective date of this License until its expiration, cancellation or termination. If insurance is not maintained, City may at its sole option, purchase insurance for the

Licensee and invoice Licensee for the cost of the insurance.

- 5.3.5. Place insurance with insurers and agents licensed and authorized to do business in Arizona and having a Best's rating of no less than A-XIII.
- 5.3.6. Maintain insurance coverage continuously throughout the term of this License. If the required insurance is provided under a claims-made policy extending coverage to events occurring during the License term but giving rise to claims made after expiration of the License, the coverage shall be maintained without lapse for a period of five years beyond the expiration, cancellation or termination of this License.
- 5.4. <u>Sublicensee</u>. Licensee shall include all subcontractors and/or insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein for the Licensee.
- 5.5. Safety. The Licensee shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.
- 5.6. <u>Questions</u>. Any questions relative to insurance requirements may be referred to Risk Manager, City of Tempe, 20 East Sixth Street, Tempe, AZ 85281, (602) 350-2975.
 - SECTION 6. <u>Term of license</u>; <u>Cancellation</u>; <u>Termination</u>; <u>Removal or Abandonment at Expiration</u>.
- 6.0. <u>Term.</u> The License shall continue and exist for a period of five (5) years from the effective date unless sooner cancelled or terminated as provided in this section.
- 6.1. <u>Licensee's Cancellation</u>. The Licensee may cancel this License before the date of expiration by providing the City with ninety (90) days express written notice of cancellation. Such cancellation shall not be effective until Licensee has removed all Radios from each Municipal Facility subject to this License, and otherwise complied with all provisions of this License.
- 6.2. <u>City's Cancellation</u>. The City may revoke, alter, suspend, or cancel the License before its date of expiration. The City may invoke this paragraph only if one of the

following conditions is met:

- 6.2.1. Licensee has failed to comply with any material provisions of this License or has, by act or omission violated any material term or condition of the License;
- 6.2.2. The Licensee has failed to comply with any lawful rule or regulation validly adopted by the City Council that is material to compliance with the License;
- 6.2.3. The Licensee has failed to maintain facilities and operations in the streets and public ways under the standard prescribed by the City for safety, operation, maintenance, and general work in the streets and public ways according to City requirements and codes; or
- 6.2.4. The Licensee sells, leases, assigns or transfers control of this License without prior consent of the City when such consent is required pursuant to this License.
- 6.3. <u>Cure Period.</u> Before modifying or terminating this License, the City Manager may make written demands that the Licensee do or comply with any applicable requirement, rule or regulation. If the failure of the Licensee continues for a period of sixty (60) days following written demand, the City Manager may place his request for termination of this License upon the next regular City Council meeting agenda; provided, however, that if the default cannot reasonably be cured within the sixty (60) day period, if Licensee shall proceed promptly to cure the same and prosecute the curing with due diligence, the time to cure the default shall be extended for a period of time as may be reasonably necessary to complete the cure. The City Manager shall cause to be served upon the Licensee, at least thirty (30) days before the date of the City Council meeting, a written notice of the intent to request termination, and the time and place of the meeting, notice of which shall be published by the City Clerk at least once thirty (30) days before the meeting in a newspaper of general circulation within the City.
 - 6.3.1. The City Council shall consider the request of the City Manager and shall hear from any interested persons, and shall determine, in its discretion, whether or not any failure by the Licensee was with just cause.
 - 6.3.2. If the failure by the Licensee was with just cause the City Council shall direct Licensee to comply within the time and manner and upon the terms and conditions as are reasonable.
 - 6.3.3. If the City Council shall determine the failure was without just cause, then the City Council may, by resolution, declare that the License shall be terminated and forfeited unless Licensee comes into compliance with the

terms of the License within the reasonable period of time as determined by the City Council.

- 6.4. <u>Renewal</u>. At any time during a two-year period before the expiration of this License, the Licensee may apply to the City for a renewal or extension of the License in accordance with then existing federal, state and City laws. Nothing in this provision shall be construed to require that the City grant a renewal or extension. However, the City shall not unreasonably deny a renewal or extension request.
- 6.5. <u>Abandonment</u>. If Licensee abandons the Radio network installed and operated pursuant to this License facilities for a period of three (3) months or more, the Radios within the City's right-of-way shall revert to City ownership.

SECTION 7. Nonassignment.

This license and the rights granted by this License shall not be assigned without the prior express written consent of the City, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Licensee hereunder to a parent, subsidiary, or affiliate of Licensee shall not be deemed an assignment or transfer for the purposes of this License.

SECTION 8. Nonexclusive License.

The License is not exclusive, and shall not be construed to prevent the City from granting other like or similar licenses, grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted the City under the Constitution and laws of the State of Arizona.

SECTION 9. Records.

The City may inspect Licensee's books and records at any time during regular business hours upon five (5) days' prior written notice to the extent necessary to confirm Licensee's compliance with the requirements of this License.

SECTION 10. Partial Invalidity.

If any section, paragraph, subdivision, clause, phrase or provision of this License shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part adjudged to be invalid or unconstitutional.

SECTION 11. Condemnation by City.

The City reserves the right to acquire the real property used in the conduct of this License by the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes.

SECTION 12. Acceptance of License Terms and Conditions.

This License shall not become effective until the License has been signed by all parties and filed with the City Clerk. By accepting this License, Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Charter and Code of the City and this License. Acceptance by Licensee must occur within one hundred and eighty (180) days of the enactment of this License by ordinance or else the License is void.

SECTION 13. Notices.

All notices which shall or may be given pursuant to this License shall be in writing and transmitted through the U.S. mail, by means of private delivery systems, or by facsimile transmission if a hard copy of the same is followed by delivery through the U.S. mail or by private delivery systems, and shall be addressed as follows:

If to the City: City of Tempe

City Manager P.O. Box 5002 31 East Fifth Street Tempe, AZ 85280

If to Licensee: Metricom, Inc.

Attn: Property Manager

333 W. Julian

San Jose, CA 95110

All notices shall be deemed given three (3) days after deposit in the mail or on the date received in the case of overnight courier. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

THIS LICENSE EXECUTED THIS _	day of	, 2000.
	MAYOR	
ATTEST:		
City Clerk		

APPROVED AS TO FORM:		
City Attorney		
	METRICOM, INC.	
	By	
	Its	

STANDARD	STANDARD STA	STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD STANDARD
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	1st pole east of intersection at Railroad Tracks SW Corner SE Corner SW Corner SW Corner SW Corner SW Corner SW Corner Tot pole south of intersection. NW Corner SE Corner Tat pole south of intersection. NW Corner SE Corner SE Corner ASU Police Station. 1st pole east of intersection. Tot #57 Residence Hall Tot foomer SE Corner SE Corner SE Corner SE Corner NE Corner	NE Comer NE Corner At Circle K MW Corner
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ADDRESS 500 N EVERGREEN ST 25.4 EGAK LEAF 800 S. PRICE RD 1028 S CRORGE DR 1400 S. SIESTA LN 2315 EASPEN DR 2316 EASPEN DR 2428 E DEL RIO DR 2428 STESTA LN 113 E CONCORDA DR 113 E CONCORDA DR 114 E CONTHERN AV 174 S SIESTA LN 175 S SIESTA LN 175 S SIESTA LN 175 S ELOYOLA DR 197 B E LOYOLA DR	1800 E ENCONTO DR. 2044 E. WILDEMUTH ANE. 1836 E DON CARLOS 800 S SMITH RD. 2075 E ETH ST 525 MC CLINTOCK RD 1570 E SHT ST 157 E HUDSON DR. 1570 E SHT ST 157 E HUDSON DR. 1570 E WESLEYAN DR. 2052 E CUITTOCK DR. 2052 E CUITTOCK DR. 2052 E CUITTOCK DR. 2053 E SOUTHERN DR. 2053 E COLITY CO. 2054 E OWER DR. 1570 E MENAL RD. 2256 S DONNER DR. 1571 DR. SEASELINE RD. 2256 S CONTHERN ST. 1560 E SEURAL RD. 2200 S RURAL RD. 232 E. LA DIOSA DR. 243 E GEREVAN DR. 252 E. LA DIOSA DR. 253 E LEMON ST. 2600 S SOLLEGE AV. 2600 S SOLLEGE AV. 2600 S COLLEGE AV.	424 V 47H ST 1008 S WILZON ST 1015 S FARMER AV 1731 S MARLIVA ANN DR 834 W 12TH ST 1000 W UNIVERSITY DR 1223 W 10TH ST 1318 S SHAFER DR 1716 S SHAFER DR 1716 S SHAFER DR
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c REMARKS 1st pole on 1st St. 1st pole south of intersection. A Sail Inn Bar Rio Lago Boat Tours	8th pole east of intersection on median NW Corner At Embassy Suites Hotel Entrance Across from Wells Fargo Bank Ar El Chilito Mexician Resturant east of At El Chilito Mexician Resturant east of	intersection listed. NW Comer Znd pole south of intersection. In front of Farmers Insurance Pole has street signs on it. Pole for street signs on it.	intersection. 1st pole east of listed intersection. 8th pole north of intersection. Next to mobile home park entrance on Kyrene. Rd.	In front of Pepperwood Golf Course Entrance sign. Located opposite street signs. NE Crner	Located opposite intersection listed on	the median. Dead end street Pole on curve	Located opposite street signs. Pole opposite street signs NE Comer	Pole east of listed intersection on cub-de sac. Pole opposite cut-de-sac. Pole opposite street signs on it. Pole opposite street signs. Ist pole north of intersection listed. Pole opposite VPM Inc.	Court Pole opposite intersection listed Dead end street 1st pole north of intersection. Pole on curve
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C REMARKS Pole on curve	At SRP Power Station Entrance on Elott Rd. opposite intersection listed SW Corner. NW Corner. Last pole north of intersection listed. Pole has street signs on it. Pole opposite street signs of St pole south of intersection listed. Pole opposite intersection listed Pole opposite intersection listed.	Use 1st or Zhd wood pole west of listed intersection. In from of Wendys NW Corner NW Corner NW Corner 1st pole east of Rita Ln. 1st pole east of Rite Ln. 1st pole west of intersection Private Street 1st pole west of intersection Across from FED X 3rd pole south of Across from FED X 3rd pole south of	intersection A Cardinals Enfrance On Hardy 1st wood pole south of intersection 3rd pole east of intersection Znd pole south of intersection At Pinacor enfrance	Galleria Palms Apt Entrance In the Rancho Tempe MiHP Entrance 1st pole west of intersection 4th pole south of intersection.	4th pole west of intersection on the median
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SOUTH SOUTH SOUTH SOUTH EAST NORTH EAST	NORTH SOUTH WEST NORTH WEST NORTH NORTH NORTH WEST SOUTH WEST	NORTH SOUTH EAST SOUTH EAST SOUTH EAST SOUTH EAST SOUTH EAST NORTH WEST NORTH WEST SOUTH SOUTH SOUTH SOUTH NORTH WEST WEST WEST EAST		NOKTH WEST SOUTH WEST SOUTH SOUTH SOUTH SOUTH SOUTH WEST WEST WEST WEST WEST WEST WEST WEST	NORTH WEST NORTH WEST OTHER SOUTH NORTH SOUTH WEST EAST
CROSS ST 7300 S RURAL RD 7300 S TERRACE RD 1000 E BLE REDA RD 1000 E BL FREDA RD 1000 E WINILLY IN 900 E. WINEDO LN 7500 S COLLEGE AV	7600 S. DATELAND DR. 500 W GROVE PRWAY 6700 S. ROCSEVELT ST 6500 S. HARDY DR. 200 E CITATION IN 0 W KALLE DE CABALLOS 8900 S. WARNER RAKCH DR. 1300 E. LOS ARBOLES DR.	7500 S RIVER PKKNAY 1900 E. LOS ARBOLES DR. 2000 S GLANTOCK DR. 2000 S. CLARK DR. 9100 S KACHINE DR. 9100 S KACHINE ST. 9300 S JUNIPER ST. 9300 S RITA LN. 900 E ARANOH RD. 900 E CARCINE LN. 900 E CARCINE LN. 900 S DATELAND DR. 700 WLA VIPER IN.	1000 W CARVER RD 1000 W WARKER RD 1500 W WARKER RD 1500 W WARKER RD 100 S, 52MD ST 100 S, 48TH ST 700 S, 11MDON IN 700 S, 11M	1400 W GENERA DR 3000 S PARKS DR 1100 W REMONT NDR 1500 W BASELINE RD 3800 S CLEMENTINE DR 1400 W ARIZONA MILLS EAST 4900 S CALLE LOS CERROS 4900 S CALLE LOS CERROS 1100 W GUADALUPE RD 1100 W GUADALUPE RD 1400 W GUADALUPE RD 1400 W DRIVERS WAY 9000 S BECK NO	9400 S PARKSIDE DR 9400 S PARKSIDE DR 900 W WASHINGTON ST 900 N COLLEGE AV 500 N COLLEGE AV 5400 N MCALLISTER AVE. 300 E WC KELLIPS 1400 N LA ROSA DR 600 E GACE DR
R 825 E TODD DR 1.205 E WIRDO LN 8308 S TERRACE RD 1028 E CALLE MONTE VISTA 8900 E CARVER RD 7800 S JENTILLY LN 230 E BRENTRUP DR	200 W. ELLIOT RD 500 W. CARMEN ST 600 W. CARMEN ST 1014 STEAHAM DR 7901 S COLLEGE AV 7900 S ASH AV 900 S MILL AV 900 W. WARNER DR 8000 S. DORSEY LN.	5		01140144111111011111	1052 VERA IN 1052 VERA IN 1405 N MILL AV 00 W WASHINGTON ST 600 E CURRY 209 E MC KINLEY ST 2000 N COLLEGE 400 E VALRIE DR 1915 N CAVALIER DR
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POLE# 18657 55575 19424 19418 33795 33815 26563		NA 56121 35025 53847 53847 53847 53825 57754 26776 161878	TE 101678 TE 80584 TE77908 60522 20142 9578 9578 50530 50530 50530 20534 Z6812 Z6812 Z1562 PR 0828 TE 12442	N/A 30062 54028 CB 2428 N/A A30969 22391 21868 43156 54650 61367 FE 142362	TE 97587 TE 97630 37 37 37 919 919 TE 27090 TE 113466b 24962 54078 9731
PT ID # 41335 41336 41338 41339 41340 41340	41343 41343 41345 41346 41348 41348 41350		41370 1 41371 41371 42230 42230 42231 42232 42233 42233 42236 42238 42238 42238 42238 42238 42238 42239 42249		43017 43020 43020 43021 43022 43023 43024 43026 43026 43026

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WOOD POLE	METAL POLE	METAL POLE	METAL POLE	METAL POLE	METAL POLE		METAL POLE	METAL POLE		WOOD POLE		METAL POLE	META! POLE			METAL POLE	MEIAL YOLD		METAL POLE	METAL POLE	
REMARKS						Pole located next to The Buttes sign on	48th St.	Pole located at end of cul-de-sac.	Last pole w/light before 1-10 heading w-	bnd on Warner Rd.; about 150 yds. Pole located inside Contempo Tempe	mhp at corner of Allison & Palomino	Drs.	Konsington and Binto Dre	Kellshigton and Find of S.	Pole located inside The Meadows mhp	on left side of office area at intersection METAL POLE	Numbers raded on pole.	Pole about 30 yds, east of intersection	listed in front of Kaplan Test Prep		
ARM DIREC	8 8	315	270	45	0		270	0		180		315	125	2		270	06		0 8	3 8	
ST SIDE	SOLITH WEST	SOUTH	NORTH FAST	SOLITH WEST	SOUTH WEST		SOUTH EAST	SOUTH		NORTH		SOUTH	i i	NON		EAST	WEST		SOUTH	WEST	
CROSS ST	1600 N BRIDALWREATH ST	1800 N MO CLINTOCK DR	1500 E TEMPE DR	TOO MARY ST	1800 W ALAMEDA DR		4800 F WESTCOURT WAY	1600 W. INVERNESS DR.		I-10 ON-RAMP		289 ALLISON DR.		326 PINTO DR.		239 MEADOWLARK CIR.	2000 W. HERMOSA DR.		300 S. MILL AVE.	100 W. UNIVERSITY DR. 1200 E. WEBER DR.	
	1045 E MARIGOLD LN	1200 F. AKESBID IN	1700 N STANSOLUN EN	OFF FURNISH DA	2700 S DIABLO WAY	2000 0000	S ARTH ST	3241 S. EDWARD DR.		1700 W. WARNER RD.		2609 W. SOUTHERN AVE.	!	2609 W. SOUTHERN AVE.		2401 W. SOUTHERN AVE.	4002 S. WENDLER DR.		21 E. THIRD ST.	820 S. MAPLE AVE. 1402 N. OLEANDER ST.	
MA OWNER	TEMPE				TUMP	15.1917	TOMOR	TEMPE		TEMPE		SRP		SRP		SRP	TEMPE		TEMPE	TEMPE	
POLE OWNER	SRP	EMPE	FEMPE	H M M	TIMPE TOTAL	T MALE	HEMBE	TEMPE		SRP		SRP		SRP			TEMPE			APS TEMPE	
LONG	-111.922573	-111.918286	-111.912283	-111.913296	-111.923981	-111.90/950	201020	33,393667 -111,966439		33.33451 -111.970478		33,390792 -111,975223		33.387593 -111.974416		-111,970642	-111,969661		-111.940488	-111.941073 -111.918931	
Z	33.448465	33.448586	33.44912	33.441959	33.440798	33.38883/		33.393667		33.33451		33.390792		33.387593		33 390887	33.3871		33,42741	33,42141	
POLE #	22 2534 E	15347	632	.56960	N/A	TE 99202		28680		197270E		A4794		A4822		A101484	51895			1702	
PT 1D #		43029	43030	43031	43032	43033		65178		73848		74633		74634		74835	74636		74658	74659	